



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 30315588

Date: MAR. 14, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an executive and consultant in the finance and accounting field, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the record did not establish that the Petitioner met the initial evidence requirements for this classification by satisfying at least three of the ten criteria under 8 C.F.R. § 204.5(h)(3) or by demonstrating her receipt of a major, internationally recognized award. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation;
- They seek to enter United States to continue working in the area of extraordinary ability; and
- Their entry into the United States has substantial prospective benefits for the country.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a two-part analysis. First, a petitioner can demonstrate a one-time

achievement (that is, a major, internationally recognized award). If a petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Amin v. Mayorkas*, 24 F.4th 383, 391-392 (5th Cir. 2022).

II. ANALYSIS

The Petitioner states that she currently works as a financial counselor for [REDACTED] and as a director of that group's Hong Kong subsidiary. She indicates she has nearly 25 years of progressive experience in business, with a focus on accounting, investments, mergers and acquisitions, and financial consulting. The Petitioner intends to work as a senior financial consultant in the United States.

A. Evidentiary Criteria

The Petitioner does not claim to qualify for extraordinary ability classification based on a one-time achievement; therefore, she must submit evidence meeting at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims she can satisfy four of the ten criteria, summarized below.

- Participating as a judge of the work of others in the same or allied field, under 8 C.F.R. § 204.5(h)(3)(iv);
- Original scholarly or business-related contributions of major significance in the field, under 8 C.F.R. § 204.5(h)(3)(v);
- Authorship of scholarly articles in professional publications, under 8 C.F.R. § 204.5(h)(3)(vi); and,
- High salary or other significantly high remuneration, in relation to others in the field, under 8 C.F.R. § 204.5(h)(3)(ix).

The Director concluded that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi). The record supports this conclusion. The Petitioner documented her participation as an expert reviewer on the Senior Certified Accountant Qualification Committee for [REDACTED] and provided sufficient supporting evidence to demonstrate that her responsibilities in this capacity satisfy the plain language of 8 C.F.R. § 204.5(h)(3)(iv). The record also demonstrates that the Petitioner co-authored scholarly articles published in professional journals in her field, thus meeting the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner submits additional evidence and maintains that she meets the remaining two claimed criteria. For the reasons provided below, we conclude the Petitioner has not demonstrated that she satisfies the requirements of at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

To satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions, but that they have been of major significance in the field. Relevant evidence submitted in support of this criterion may include but is not limited to published materials about the significance of the person's original work; testimonials, letters, and affidavits about the person's original work; and documentation that their original work was cited at a level indicative of major significance in the field. *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual> (providing guidance for evaluating evidence submitted in support of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)). Detailed letters from experts in the field explaining in detail the nature and significance of the original contribution may provide valuable context, particularly when the record includes other documentation corroborating the claimed significance of the person's contributions. *See id.*

As initial evidence under this criterion, the Petitioner stated that she compiled and co-authored several Chinese textbooks in the accounting and finance field, including:¹

- [REDACTED] (2016), which she stated was “recommended as a textbook for adult education by National Textbook Reviewing Committee.”
- [REDACTED] (2012), which she claimed was “appointed as a key textbook for the program of ‘21st Century Higher Vocational College Accounting Professional Course Reform’ launched by the Department of Education of [REDACTED]”
- [REDACTED] (latest reprint in 2017), which she describes as a “bestseller” that is “suitable for non-accounting students in colleges and universities to learn and master the essence of accounting.”
- [REDACTED] (2017), which she describes as a “recommended textbook” for accounting majors at Chinese universities, noting its compilation was “sponsored by the Ministry of Finance.”

The Petitioner stated that the listed textbooks were innovative in various ways. For example, she stated that [REDACTED] focused on accounting methods for new business types emerging in the changing Chinese economy. She further claimed that [REDACTED] was innovative in its organization and structure because it “highlights practical application as its goal” which “improves the quality of personnel training and teaching level.”

¹ The Petitioner included images of the textbook covers in her initial statement but did not provide certified English translations corroborating her authorship claims, as required by 8 C.F.R. § 103.2(b)(3)(iii). Instead, she submitted screenshots of listings for the books from an online Chinese bookstore and indicated the pages were “translated by Microsoft Edge auto-translation function.”

In a request for evidence (RFE), the Director acknowledged the Petitioner's claims and initial evidence but advised that the record lacked "evidence describing the impact of these contributions on the field." The Director provided a list of the types of evidence the Petitioner could provide such as letters from experts in her field, evidence that her contributions have provoked widespread public commentary in the field, or other evidence establishing that people throughout the field consider her work important.

In a statement submitted in response to the RFE, the Petitioner emphasized that [redacted] [redacted] "was selected as the [redacted] Vocational Education National Planning Textbook," a distinction she described as "the most authoritative national award for textbooks." The Petitioner explained that the list of selected books was promulgated on the portal website of the Chinese central government in [redacted] 2015, with the same notice listed on the Ministry of Education's official website.

The Petitioner submitted translated excerpts of these online public notices but did not provide the published list of selected textbooks with an English translation. The notice from the Ministry of Education website indicates that 2611 textbooks from 80 publishers were selected as "the second batch of national planning textbooks for vocational education during the [redacted]" The notice advises educational administration departments and vocational colleges to refer to the textbook lists "to do a good job in the selection of textbooks and ensure that high-quality textbooks enter the classroom." The Ministry of Education's notice states that the selected textbooks "meet professional standards and job requirements, pay attention to absorbing new knowledge, new technologies, new processes and new methods of industry development," and are authorized to download and display a "special logo" indicating their selection as national planning textbooks.

The Petitioner further indicated that, in 2016, the books [redacted] "were selected by Ministry of Finance as the [redacted] textbooks." As evidence of their selection, she provided screenshots of the book covers and what a self-prepared, uncertified translation of a logo that appears on the books.

The Director determined that the evidence the Petitioner submitted at the time of filing and in response to the RFE was insufficient to establish that she has made original contributions of major significance in her field. The Director acknowledged evidence related to the selection of one or more of her published works as "National Planning Textbooks." However, they found that the limited information provided regarding the government's selection criteria did not support a determination that selected textbooks could be deemed contributions of major significance in a given field. The decision highlights the fact that over 2600 books were selected for the same list "in the second batch alone" and emphasizes that "no evidence has been provided showing how the petitioner's contributions differ from the thousands of others granted this logo, or to demonstrate the significance of being granted the logo."

On appeal, the Petitioner provides additional explanation regarding the significance of the "National Planning Textbook" selection. She notes that the first batch of books selected in 2015 were "general higher education undergraduate textbooks, while the second batch included "vocational education undergraduate textbooks." The Petitioner claims that while 2611 books were selected in that second batch, "only 3 or 4 books were selected for each major," noting that "only materials that have a significant impact could be selected and they had driven important change in [the] relevant industry."

The Petitioner further explains that “textbooks are not revised very often in China” and emphasizes that 2012-2017 was “a key time for accounting industry reform.” She maintains that she was invited to participate in the compilation, review, and revision of accounting teaching materials in her capacity as “a well-known industry expert,” and added some new material to these textbooks that was based on her knowledge and direct experience. The Petitioner notes that these “new contents” included an “improved financial statements format,” distinct definitions of “accounts receivable” and “accounts received,” and guidance on “how to judge the actual operating conditions of enterprises and avoid risks of investors through data of mutual checks and balances.”

Upon review, we agree with the Director’s determination that the Petitioner did not demonstrate she has made original contributions of major significance in her field. While the selection of a published book as a “national planning textbook” appears to be noteworthy for a books’ authors, editors and publishers, the record does not contain evidence demonstrating that such a selection is reserved for textbooks that are deemed to be of major significance in a given field. As noted by the Director, the limited information provided regarding the selection process indicates that the books chosen are deemed to “meet professional standards and job requirements” and “pay attention to absorbing new knowledge, new technologies, new processes and new methods of industry development.” The Petitioner’s claim that “only materials that have a significant impact” and “had driven important change” in a given industry or field could be selected is not supported by any independent, objective evidence. In fact, the Petitioner indicates that her book [REDACTED] [REDACTED] which she claims was published in February 2016, was selected as a National Planning Textbook in [REDACTED] 2015. As such, her contention that the textbook “had driven important change” or had a significant impact in her field at the time of its selection is not persuasive.

Finally, while we do not doubt that the textbooks the Petitioner’s co-authored and compiled were published at a time of significant change in the Chinese economy that naturally led to a need for accounting textbook revisions, the record contains insufficient evidence that these specific textbooks intended for vocational college students had an impact or implications of major significance in her field. The record before the Director contained no expert opinion testimony, recommendation letters, or other independent evidence addressing how the textbooks are recognized in the field as making original contributions of major significance, and the Petitioner did not claim that she met this criterion based on any other original contribution in her field.

On appeal, the Petitioner submits a recommendation letter from F-G-, chief editor of [REDACTED] which is described a professional journal in the financial industry. The author, who describes her prior working relationship with the Petitioner, opines that she “has made important contributions to accounting integrity, supervision, enterprise control system and financial risk prevention, enterprise accounting standards and accounting reform.”

Because the Petitioner was previously put on notice and given a reasonable opportunity to provide this type of evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial”).

For the reasons provided above, the Petitioner has not established that she satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v).

Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

In her initial letter in support of the petition, the Petitioner asserted “my income level is much higher than average in financial consulting field.” She stated that she earns income from three sources that places her in the “top 0.1% of the same industry.” Specifically, she explained that her income is derived from her salary at [REDACTED] from her work in financial consulting in enterprise mergers and acquisitions, and from payments she receives as a visiting professor and as a co-author of textbooks in her field.

The Petitioner’s initial evidence included a statement of employment and income from [REDACTED] [REDACTED] indicating she has worked for that company since 2010, currently holds the position of general director, and earned HK\$2,231,765 “including salary, bonus, subsidy, etc.” in 2021-2022. The Petitioner also submitted bank records of certificates of deposit in support of her claim that she and her spouse have cash deposits valued at over \$8.25 million, noting that her income accounts for 60 percent of the total deposits.

In the RFE, the Director acknowledged the initial evidence but emphasized that the certificates of deposit did not demonstrate the source of the Petitioner’s remuneration or otherwise sufficiently document her past earnings. Further, the Director noted a lack of supporting evidence comparing the Petitioner’s remuneration to her peers in her field. The Director advised that the Petitioner should provide tax returns, pay statements, or other evidence of her past salary or remuneration, and comparative wage or remuneration data for her field, such as geographical and position-appropriate compensation surveys.

In her response the Petitioner asserted that she receives reportable income in both Hong Kong dollars (which includes her salary, bonus, director’s fee, and other income from [REDACTED]) and income in Chinese Yuan derived from her authorship of textbooks, serving as a visiting professor, and provision of financial consulting services. She submitted tax documentation for the years 2021 and 2022 for both Hong Kong and mainland China.

The evidence showed that the [REDACTED] Hong Kong subsidiary paid the Petitioner HK\$1,153,515 in salary for the year ended March 31, 2023, and HK\$1,137,096 for the year ended March 31, 2022. In both years, she earned “commission/fees” of approximately HK\$200,000, a bonus of approximately HK\$750,000, and total remuneration of HK\$2.5 million. The Petitioner’s Chinese Annual Individual Income Tax Returns for 2021 and 2022 also show [REDACTED] as her employer and indicate that she received over CN¥390,000 as “remuneration for services” and over CN¥175,000 in “author’s remuneration” in both years.

The Petitioner provided the following comparative wage data:

- “Accounting and Finance Average Salaries in Hong Kong 2023” from Salary Explorer (salaryexplorer.com) showing an average annual salary of HK\$456,000 and a high average salary of HK\$908,000.
- “Financial Reporting Consultant Average Salary in China 2023” from Salary Explorer, showing an average salary of CN¥351,000 and a high average salary of CN¥534,000.
- Occupational Employment and Wage Statistics for “Financial and Investment Analysts” from the Bureau of Labor Statistics (BLS), showing a mean annual wage of \$108,790 and a 90th percentile wage of \$169,450 for the United States.

The Director determined that the Petitioner did not meet this criterion, noting that although she provided her remuneration with [REDACTED] the evidence comparing her remuneration to others is “general information describing accounting and finance employees as an entire group without regard for years of experience, education or seniority within a company.” The Director also emphasized that the Petitioner serves as a director for a company, noting that an executive level position “typically commands higher remuneration and involves different functions than that of an accountant or analyst.” The Director emphasized that “without specific documentary evidence comparing the petitioner[’s] remuneration to that of her peers in the same level of employment . . . USCIS cannot determine that her remuneration is high.”

On appeal, the Petitioner contests the Director’s determination and asserts that her position as the general director of [REDACTED] Hong Kong subsidiary “is a professional job in financial consulting, not an executive position.” She further contends that “[a] sub-branch director is never paid as an executive position,” noting that her employer has “hundreds of this kind positions [sic] in China and more than 600 similar directors outside mainland China.” The Petitioner also emphasizes that she provided evidence of the high income she received for her work as a financial consultant and asserts that she provided an appropriate comparison to salaries earned by financial consultants in mainland China. She explains that she earned income from consulting and lecturing during her personal time and therefore this income “has nothing to do with” her position at [REDACTED]

We agree with the Director’s determination that the Petitioner did not establish that she has commanded a high salary, or significantly high remuneration, for her services as a director, in relation to other similarly employed workers in Hong Kong. While the Petitioner objects to the Director’s characterization of her general director position as “executive” in nature, she expressly stated that she is “in charge of strategic investment, acquisition, and public listing of sub-companies” for a company she described as “the largest modern agriculture and food industry enterprise group in China.” She further stated that she “took responsibility” for two major internal company transactions. While she now downplays her level of responsibility and asserts that she performs in a lower-level professional accounting or finance role for her employer, she has not submitted, for example, a letter from the company clarifying the nature of her job duties and level of seniority as a general director and financial counselor.

Even if the Petitioner submitted evidence in support of her assertion that the position of “general director” of a company is not a managerial or executive position, the record does not contain sufficient objective information regarding her duties to demonstrate that average wages for “accounting and finance” are an appropriate basis for comparison. The wage information provided by Salary Explorer does not specify which occupations or industries were included in the survey results and or otherwise

provide a description of the “accounting and finance” occupation. Broad descriptions that include multiple occupations or multiple industries may not provide an accurate comparison to others in the field. *See generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

We have also considered the Petitioner’s claim that she commanded a high salary as a financial consultant, based on the income reported on her mainland China tax returns for the years 2021 and 2022. The Petitioner reported “remuneration for services” of over CN¥390,000 for 2021 and 2022. She did not document the source of this income or provided evidence that she was paid specifically for provision of “financial consulting services.” Regardless, the submitted “financial reporting consultant” salary data she provided for China shows an average salary of CN¥351,000 and a high salary of CN¥534,000. Assuming that the reported “remuneration for services” was derived from financial consulting work, the evidence shows that her remuneration was above average, but well below the high salary reported by Salary Explorer. While the Petitioner indicated that she also received “author’s remuneration” in 2021 and 2022, she did not provide comparative salary data for writers or authors.

Finally, we acknowledge the Petitioner’s submission of BLS salary data for financial and investment analysts; however, we evaluate persons working outside the United States based on the wage statistics or comparable evidence relevant to their work location, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States. The Petitioner has not claimed that she has commanded a high salary for a U.S.-based position and therefore the BLS data is not relevant to our evaluation of this criterion.

For the reasons discussed above, the Petitioner has not established she has commanded a high salary or other significantly high remuneration in relation to others based on her earnings in Hong Kong or mainland China. Accordingly, she has not demonstrated that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

B. Final Merits Determination

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documentation showing that she meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve the final merits determination. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. *See Matter of Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability,”); *Visinscaia*, 4 F.

Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is “extremely restrictive by design,”). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, although the Petitioner has achieved professional success in her field, the record does not demonstrate that she has garnered sustained national or international acclaim, and that she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility for classification as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.